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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No. 412

GREAT LAKES DREDGE & DOCK COMPANY,
A CORPORATION,
Petitioner,

vs.

L. METCALFE WALLING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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INDEX.

		PAGE
I	Petition for Writ of Certiorari	1
	Summary and short statement of the matter involved	2
	Opinions below	4
	Basis for jurisdiction	4
	Question presented for review	5
	Reasons relied upon for allowance of writ	5
	Statutes involved	2, 3
II	Brief in support of petition	8
	Statement	8
	Opinions of the Courts below	10
	Specification of Errors	10
	Argument	14
	The lower Court has decided an important question of Federal law which should be settled by this Court	14
	The Circuit Court has decided a Federal question in conflict with the applicable decisions of this Court	16
	The decision of the Circuit Court is in conflict with the decision in Walling, Admr., etc. v. Bay State Dredging & Contracting Co. (First Circuit)	19
	The indulgence of the Circuit Court in judicial legislation requires the supervision of this Court	20
	The decision of the Circuit Court results in discrimination between employes	28
	The Circuit Court failed to comprehend the issues involved and pass fully thereon	30
	The authorities cited in support of the Circuit Court's decision do not support it	31

AUTHORITIES.

Abbotsford, The, 98 U. S. 440 20
Alabama, The, 19 Fed. 544 16
Albama and Two Scows, The, 22 Fed. 449 16
Bolan v. Bay State Dredging & Contracting Co., 48 F. Supp. 266 15
Butler v. Ellis, 45 F. (2d) 951 16
City of Los Angeles v. United Dredging Co., 14 F. (2d) 364 16
Connelly v. The International, 83 Fed. 840 16
Ellis v. United States, 206 U. S. 246 17
Evans v. The Starbuck, 61 Fed. 502 16
Floyd Acceptances, The, 7 Wall. 666 27
Gale v. Union Bag & Paper Corp., 116 F. (2d) 27, 313 U. S. 559 21
Heppard v. The General Cadwalader, 10 Fed. Cas. 169 16
Hoffman v. Palmer, 129 F. (2d) 976 20
Huismann v. The Pioneer, 30 Fed. 206 16
Hurricane, The, 2 F. (2d) 70 16
Kepner v. United States, 195 U. S. 100 20
Kibadeaux v. Standard Dredging Co., 81 F. (2d) 670 .. 16
Little v. Barreme, 2 Cranch 170 27
Logan v. United States, 144 U. S. 263 20
McMaster v. One Dredge, 95 Fed. 832 16
McNamara v. The Atlantic, 53 Fed. 607 16
McRae v. Bowers Dredging Co., 86 Fed. 344 16
Marbury v. Madison, 1 Cranch 137 27
North American Dredging Co. v. Pacific Mail S. S. Co., 185 Fed. 698 16
Robert W. Parsons, The, 191 U. S. 17 16
Saylor v. Taylor, 77 Fed. 476 16
Schechter Poultry Corp. v. U. S., 295 U. S. 495 27

South Chicago Co. v. Bassett, 309 U. S. 251..... 18
Steam Dredge No. 1, 87 Fed. 760..... 16
The Abbotsford, 98 U. S. 440..... 20
The Alabama, 19 Fed. 544..... 16
The Alabama and Two Scows, 22 Fed. 449..... 16
The Floyd Acceptances, 7 Wall. 666..... 27
The Hurricane, 2 F. (2d) 70..... 16
The Robert W. Parsons, 191 U. S. 17..... 16
United States v. Merriam, 263 U. S. 179..... 20
Walling, etc. v. Bay State Dredging & Contracting Co., 149 F. (2d) 346.....5, 15, 19, 27, 29
Westerlund v. Black Bear Mining Co., 203 Fed. 599.... 20

TEXT-BOOKS.

1 Warren, Supreme Court, 199 et seq. 27

STATUTES.

Fair Labor Standards Act, 1938:
52 Stat. 1060, 29 U. S. C. 201, et seq. 2
52 Stat. 1065, 29 U. S. C. 210, et seq. 4
Judicial Code:
26 Stat. 828, 28 U. S. C. 347..... 4
36 Stat. 1157, 28 U. S. C. 347..... 4
43 Stat. 938, 28 U. S. C. 347..... 4
45 Stat. 54, 28 U. S. C. 347..... 4
48 Stat. 926, 28 U. S. C. 347..... 4
Act of 1892 (Eight-hour Law):
27 Stat. 340, 40 U. S. C. 321..... 16
37 Stat. 726, 40 U. S. C. 221..... 17
37 Stat. 137, 40 U. S. C. 324..... 17
Merchant Marine Act, 1936:
49 Stat. 1985, 1992, 46 U. S. C. 1111, 1131..... 21

ADMINISTRATIVE BULLETINS.

Interpretative Bulletin, No. 11 ..... 13, 15
1942 Ed.—Wage & Hour Manual, 368 15

ATTORNEYS GENERAL'S OPINIONS.

29 Op. Atty. Gen. 583 17
38 Op. Atty. Gen. 150 17

MISCELLANEOUS.

Secretary of Labor General Order No. 1, July 3, 1945. 27, 28
Joint Hearings before Senate Committee on Education and Labor and House Committee on Labor on S. 2475 and H. R. 7200, 75th Cong., 1st Sess., pp. 1216, 1217 and pp. 546-549 ..... 22, 23

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L. METCALFE WALLING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Comes now Great Lakes Dredge & Dock Company, a corporation of the State of New Jersey, and having its principal office and place of business at 122 South Michigan Avenue, Chicago, Cook County, Illinois, and respectfully presents this its petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit to review the judgment of the Circuit Court of Appeals entered in the above entitled cause on April 24, 1945, and in which the Petition for Rehearing was denied on June 9, 1945, and respectfully represents to this Court:

I.

SUMMARY AND SHORT STATEMENT OF THE MATTER INVOLVED.

This case was commenced upon complaint of L. Metcalfe Walling, Administrator of the Wage and Hour Division, United States Department of Labor,[1] brought in the District Court of the United States for the Northern District of Illinois, Eastern Division, on April 30, 1943, under Section 17 of the Fair Labor Standards Act of 1938 (Act of June 25, 1938, c. 676, 52 Stat. 1060; U. S. C. Title 29, Sec. 201, *et seq.*)[2] to enjoin the petitioner from alleged violations of Sections 7 and 15(a)(2)[3] of the Act, with respect to payment of compensation to its employes employed on dredges, barges, draglines, derricks, drill barges, tugs and other equipment and machinery used in constructing, re-

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[1] Hereinafter referred to as the "Administrator".

[2] Hereinafter referred to as the "Act".

[3] Section 7(a) of the Fair Labor Standards Act provides:

"Sec. 7.(a) No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce—

"(1) for a workweek longer than forty-four hours during the first year from the effective date of this section.

"(2) for a workweek longer than forty-two hours during the second year from such date, or

"(3) for a workweek longer than forty hours after the expiration of the second year from such date,

unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."

Section 15(a) (2) of the Fair Labor Standards Act provides:

"Sec. 15.(a) After the expiration of one hundred and twenty days from the date of enactment of this Act, it shall be unlawful for any person * * *

"(2) to violate any of the provisions of section 6 or section 7, or any of the provisions of any regulation or order of the Administrator issued under section 14."

constructing, repairing and improving levees, in excavating, dredging, improving and deepening navigable rivers, lakes, channels, canals, seaplane take-offs, landing areas and other instrumentalities of interstate commerce for hours worked in excess of the hours prescribed in Section 7 of the Act. (R. 2-3.)

The petitioner answered the complaint defending on the ground that its employes so employed are seamen and are therefore exempt from the provisions of Section 7 of the Act by reason of Section 13(a)(3) of the Act, which exempts from the provisions of Sections 6 and 7 of the Act "any employee employed as a seaman".[4] (R. 5-7.)

After issue was joined on the pleadings the parties to the above captioned cause entered into a Stipulation of Facts (R. 8-28, incl.) and also stipulated that the sole issue before the Court was whether the employes of the petitioner employed, on navigable waters throughout the United States, in the operation of the equipment described in the stipulation, *i. e.*, tugs, hydraulic, dipper and clamshell dredges, deck, dump, dock, anchor, fuel and water scows and launches, are seamen within the meaning of that term as used in Section 13(a)(3) of the Act. (R. 9.) Paragraphs 54, 55 and 56 of the Stipulation eliminated all question as to petitioner's compliance with the Act in relation to "overtime compensation" paid to all employes employed in the construction, repair, etc., of maritime projects such as breakwaters, bridges, docks, etc. (R. 26-27), and upon the trial it was agreed in open court that those employed on tugs are exempt under Section 13(a)(3) of the Act. (R. 32.)

After the trial of the case in the District Court (where

[4] Section 13(a) (3) of the Fair Labor Standards Act provides: "Sec. 13.(a) The provisions of sections 6 and 7 shall not apply with respect to * * * (3) any employee employed as a seaman; * * *."

some evidence was introduced that did not add materially to the Stipulation of Facts (R. 34-77, incl.)) the Court entered its findings of fact and conclusions of law. (R. 83-98.) Based upon those findings of fact and conclusions of law the District Court entered judgment on June 26, 1944, restraining the petitioner from "employing any of its dredging employes who are employed on its dredges in interstate commerce, in dredging activities, for a workweek longer than 40 hours, unless such employe receives compensation for his employment in excess of 40 hours in such workweek at a rate not less than one and one-half times the regular rate at which he is employed." (R. 98.)

From the judgment of the District Court the petitioner appealed to the Circuit Court of Appeals for the Seventh Circuit, which Court affirmed the judgment of the District Court on April 24, 1945, and denied petitioner's petition for rehearing on June 9, 1945. It is from the judgment of the Circuit Court of Appeals that this petition for Writ of Certiorari is prayed. (R. 125-129.)

II.

BASIS FOR JURISDICTION OF THIS COURT.

The jurisdiction of this Court to review the judgment of the Circuit Court of Appeals for the Seventh Circuit is predicated upon Sections 239 and 240 of the Judicial Code, as amended (Mar. 3, 1891, c. 517, Sec. 6, 26 Stat. 828; Mar. 3, 1911, c. 231, Sec. 240, 36 Stat. 1157; Feb. 13, 1925, c. 229, Sec. 1, 43 Stat. 938; Jan. 31, 1928, c. 14, Sec. 1, 45 Stat. 54; June 7, 1934, c. 426, 48 Stat. 926; U. S. C. Title 28, Sec. 347) and Section 10(a) of the Fair Labor Standards Act of 1938 (June 25, 1938, c. 676, Sec. 10, 52 Stat. 1065, U. S. C. Title 29, Sec. 210).

III.

QUESTION PRESENTED FOR REVIEW.

The only issue in this case is whether the employes of the petitioner employed on its dredges and their attendant floating equipment (excluding tugs and their crew complements) are seamen within the meaning of Section 13(a)(3) of the Act and therefore not subject to Sections 7 and 15(a)(2) thereof.*

IV.

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT.

1. The Circuit Court of Appeals for the Seventh Circuit has decided an important question of federal law which has not been, but should be, settled by this Court.

2. The Circuit Court of Appeals for the Seventh Circuit has decided a federal question in a way probably in conflict with applicable decisions of this Court.

3. The decision of the Circuit Court of Appeals for the Seventh Circuit is in conflict with the decision of the Circuit Court of Appeals for the First Circuit in the case of *L. Metcalfe Walling, Administrator of the Wage and Hour Division, United States Department of Labor* v. *Bay State Dredging & Contracting Co.*, 149 F. (2d) 346, in that the decision of the Seventh Circuit includes within the provisions of Sections 7 and 15(a)(2) of the Act all persons

* Judge Barnes by his decision in the District Court purported to cover the status of all of petitioner's employes "who may generally be described as dredgemen" (R. 79) in relation to the meaning of the term "seaman" as used in Section 13(a)(3) of the Act. Yet by the judgment entered he limited the granting of the injunctive relief sought to employes who are employed on dredges in interstate commerce in dredging activities. (R. 98) The judgment of the Circuit Court of Appeals is likewise limited to "men employed on dredges." (R. 125.)

employed on dredges, while the decision of the First Circuit exempts workers on scows (sometimes called barges).

4. The Circuit Court of Appeals has so far departed from, and has sanctioned a similar departure by the District Court from, the accepted, established and usual principles of statutory construction in disregarding the established precedent of this Court with respect to the meaning of the term "seaman" that this Court should exercise its power of supervision over said Circuit Court to correct such gross departure from established precedent and indulgence in judicial legislation.

5. The decision of the Circuit Court of Appeals for the Seventh Circuit when applied to the complement of a crew of a dredge and its attendant equipment results in discrimination between persons employed at substantially similar tasks, under substantially similar conditions on the same job at the same location during the same hours of work.

6. The Circuit Court of Appeals failed, as did the District Court, to pass upon and determine the status of all employes engaged in dredging activities, except those employed on dredges and tugs (to the extent the latter are exempt by reason of the agreement of counsel for the Administrator) notwithstanding the fact that by stipulation and by issue made under the pleadings the status of all employes employed in the operation of the equipment described in the Stipulation of Facts in relation to Section 13(a)(3) of the Act was in issue. (R. 9.)

7. The authorities cited by the Circuit Court of Appeals for the Seventh Circuit do not support or sustain the conclusion reached as the final judgment of that Court and that Court gave no consideration to the legislative and judicial meaning of the term "seaman" as long recognized by this Court. (R. 133-138.)

WHEREFORE petitioner, Great Lakes Dredge & Dock Company, prays the issuance of a Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit to review the judgment of that Court in the above entitled case.

Respectfully submitted,
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Petitioner,

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